IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) Nos.196 to 198 of 2003

M/s.Magam Inc.,
B-254, 50th Street
Chennai - 600 083. .. Appellant in all Tcs.

Vs

The Commissioner of Income Tax
Tamil Nadu
Chennai-600 034. .. Respondent in all Tcs.

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 4.9.2001 made in ITA Nos.2871, 2872 and 2724/Mds/1992 for the assessment years 1987-88 and 1989-90 against the Order of the Commissioner of Income Tax (Appeals) VI, Madras 600 034 dated 24.8.1992 and made in IT Appeal No.184/92-93/City Ward II and I.T.Appeal No.185/92-93/City Ward II against the Order of the Income Tax Officer, City Ward II(6) Madras 6 dated 27.4.92 and made in PA.No./GIR No.28315-M.

For Appellant : Mr.Philip George
For Respondent : Mrs.Pushya Sitaraman
Sr.Standing Counsel for I.T.

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

WEB COPY

The above tax case appeals are directed against the order of the Income-tax Appellate Tribunal dated 4.9.2001 made in ITA Nos.2871, 2872 and 2724/Mds/1992.

2. The assessee is a registered partnership firm carrying on the business of blasting and excavation of Granite and then cutting and polishing them into blocks known in the industry as dimensional blocks. The main submission of the assessee before the Commissioner of Income Tax

https://hcservices.ecourts.gov.in/hcservices/

(Appeals) was that granite was not to be considered as a mineral and therefore, the relief under section 80 HHC was allowable. The Commissioner agreed with the appellant and allowed the appeals. On appeal by the Department, the Tribunal held in favour of the Department. Hence, the present appeals raising the following substantial questions of law:

> (i) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in holding that the profits derived from the export of the dimensional granite blocks, being value added marketable commodity, would not be entitled to deduction u/s. 80HHC of the Income Tax Act, 1961?
>
> (ii) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in holding that the Appellant had exported only granite without appreciating or considering the submissions made before it that on conversion into dimensional blocks the original character of minerals was no longer existing, which was based on the various decisions placed before it? and
>
> (iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not following the decision of the self same Income Tax Appellate Tribunal in the appellant's own case for the assessment year 1988-89 which was placed on its files?"

3. The learned counsel for the appellant assessee fairly submits that the questions of law raised in these appeals are covered in favour of the Revenue by the decisions in:

(i) Commissioner of Income-tax Vs. Pooshya Exports P. Ltd., [2003] 262 ITR 417; and
(ii) Gem Granites Vs. Commissioner of Income-tax [2004] 271 ITR 322.

4. This Court in Commissioner of Income-tax Vs. Pooshya Exports P. Ltd., [2003] 262 ITR 417, after referring the relevant provision of the statute, i.e., Section 80HHC of the Income-tax Act, held that, by virtue of the expression "the export of any goods or merchandise to which this section applies" employed in Section 80HHC and by virtue of sub-section 2 (b)(ii), which specifically denied the benefit of the section to export of granite (mineral), the benefit under section 80HHC is not available to the assessee; that by the Amendment Act 2 of 1991, an exception has been carved out to the specific provision which excluded, rather denied the benefit conferred under section 80HHC to export of minerals (granite); that the amendment brought by the Finance (No. 2) Act of 1991 to Section 80HHC is only prospective and effective from April 1, 1991; and that the statutory provision is very clear in the sense that section 80HHC is not applicable to the export of granite.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. That apart, the Apex Court in Gem Granites Vs. Commissioner of Income-tax [2004] 271 ITR 322, held that :

> "There are no words of restriction which qualify the word "minerals" and it would be reasonable to assume that in the absence of any such limitation, the word must be read to include all kinds of minerals in all its forms, i.e., whether subjected to any process or not as long as it continued to retain the characteristics of the mineral. To hold that the word "minerals" never included processed minerals would require our reading words of limitation into an otherwise clear and unambiguous statutory provision. There is no dispute that granite is covered by the word "minerals" in the exclusionary clause (b) of sub-section (2) of section 80HHC. It would follow that for the unamended section 80HHC (2)(b) cut and polished granite would also be a mineral.
>
> The introduction of the phrase "other than" in clause (b) of sub-section (2) of section 80HHC in 1991 in our opinion,indicates the carving out of a specific class from the generic class of "minerals and ores". This means, that were it not for the exception, the specified processed minerals and ores would have been covered by the words "minerals and ores". It also indicates that only the minerals and ores subjected to the process of cutting and polishing would be entitled to the benefit of section 80HHC meaning thereby that all other species of processed minerals and ores would continue to be covered by the general exclusion applicable to the generic class. The 1991 amendment of section 80HHC thus conclusively demonstrates that the words "minerals and ores" must be construed widely and in an unrestricted manner. As has been held in Municipal Committee v. Manilal Manekji P. Ltd., AIR 1967 SC 1201 ; [1967] 2 SCR 100 and Pappu Sweets and Biscuits v. Commissioner of Trade Tax, U. P. [1998] 7 SCC 228 ; [1998] 111 STC 425 (SC), subsequent legislation may be looked into to fix the proper interpretation to be put on the statutory provisions as it stood earlier. The benefit of section 80HHC has been extended by the amendment to a specific kind of mineral and was introduced for the first time in 1991. If we were to hold that the word "minerals" in sub-section (2)(b) never included processed minerals then the 1991 amendment excepting processed minerals from the exclusionary effect of the sub-section would be rendered meaningless and an exercise in futility."

6. Following the decisions referred supra, this Court, by judgment dated 21.2.2006 made in T.C.No.55 of 2000, held that the profits derived from the export of the dimensional granite blocks, being value added marketable commodity, would not be entitled to deduction under Section 80HHC of the Income Tax Act.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. Drawing support from the decisions referred supra, we are of the considered view, that the amendment brought by the Finance (No. 2) Act of 1991 to Section 80HHC of the Income Tax Act is only prospective and effective from April 1, 1991, and for the assessment years 1987-88 and 1989-90 under consideration, the statutory provision is very clear in the sense that Section 80HHC of the Income Tax Act is not applicable to the export of granite.

In the result, these appeals are dismissed, the questions of law are answered in affirmative and in favour of the Revenue.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sasi

To:
1. The Assistant Registrar,
   Income-tax Appellate Tribunal,
   Rajaji Bhavan, Besant Nagar,
   Chennai.
2. The Commissioner of Income-tax (Appeals)-VI
   Madras 600 034.
3. The Commissioner of Income-tax,
   Tamilnadu-III, Madras.
4. The Income Tax Officer, City Ward II(6), Madras.

+ 1 CC To Mr. Philip George, Advocate SR NO. 31339

+ 1 CC To Mrs.Pushya Sitaraman, Advocate SR NO.31141

T.C.Nos.196 to 198 of 2003
17.7.2006

ng(co)
gp/8.8.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/